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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of)
Sections 3(n) and 332 of)
the Communications Act)
)
Regulatory Treatment)
of Mobile Services)

GN Docket No. 93-252

To: The Commission

**REPLY COMMENTS OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.**

The Industrial Telecommunications Association, Inc. ("ITA") hereby respectfully submits these Reply Comments responsive to the various comments filed in the above-referenced proceeding.

I. BACKGROUND

1. On November 8, 1993, the Industrial Telecommunications Association filed Comments responsive to the Commission's Notice of Proposed Rule Making in this proceeding. In these Comments, ITA urged the Commission to preserve the "private mobile service" designation for mobile services that are not the functional equivalent of a commercial mobile service. ITA stated that those mobile services which are not capable of competing on an effective basis with common carriers and those mobile services which, as a practical matter, do not compete effectively with common carriers could not be considered functionally equivalent to a commercial mobile service.

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II. REPLY COMMENTS

2. ITA is concerned that some of the commenting parties appear to have ignored the Congressional intent underlying the statutory definition of "private mobile service". In particular, ITA believes that those common carrier entities who suggest that the Commission should adopt a broad definition of the term "commercial mobile service" have engaged in an incomplete analysis of the new Section 332 of the Act.

3. As ITA noted in its Comments, there is a creative tension underlying the new statutory definitions of "commercial mobile service" and "private mobile service". Neither definition can be considered as absolute. When implementing the new definitions, the Commission must continue to classify mobile services that are not "the functional equivalent of a commercial mobile service" as private systems. It is not a question of whether the Congressional definitions should be applied broadly or narrowly. Rather, it is a question of adhering to the Congressional mandate.

4. Some common carriers express concern that unless the term "commercial mobile service" is defined broadly, the new rules might result in disparate treatment for services that are comparable. ITA believes that taking this "broad" approach will distort Congress' intent. If the Commission's definition of "commercial

mobile service" is overly broad, it will erroneously encompass some mobile services that are not functionally equivalent to a commercial mobile service. It is clear, from the express words used to define "private mobile service", that Congress did not intend this result.

5. Given the subtle distinctions drawn in the statutory definitions, it is inaccurate to say that Congress intended the Commission to take a "broad" approach in defining a "commercial mobile service". Similarly, it would be inaccurate to assert that the term should be defined narrowly. Rather, the rules ultimately adopted should be crafted to reflect, as best as possible, the considerations that Congress deemed important. These essential considerations, considered in conjunction, are:

- (1) whether a given mobile service is being provided for profit; and
- (2) whether the mobile service makes interconnected service available to the public or to such classes of users as to be effectively available to a substantial portion of the public; and
- (3) whether the service is the functional equivalent of a commercial mobile service.

6. In this regard, ITA endorses the analytical model presented in the Comments filed by Motorola, Inc. ITA believes

that Motorola's approach represents a reasoned attempt to reflect both the realities of the marketplace and the Congressional concern for equivalent regulation of similarly situated mobile service providers. From ITA's perspective, Motorola's model also brings the requisite degree of predictability to the process.

7. ITA agrees with Motorola's fundamental premise that it is essential that the spectrum previously allocated for the private needs of government and business not be converted to commercial use or subjected to common carrier regulation. ITA believes, as Motorola has stated, that the Commission must be careful to ensure that the regulations ultimately adopted do not undermine the legitimate interests of "the critically important private land mobile user community".¹

8. The final rules drafted by the Commission in this proceeding must be clear and unambiguous, easily interpreted and capable of being readily applied to the various classes of mobile services in existence. ITA believes that Motorola's approach is consistent with each of these objectives.

9. ITA agrees with the American Mobile Telecommunications Association ("AMTA") that traditional SMR systems are not equivalent to cellular and Enhanced SMR systems. As ITA noted in its Comments, there are numerous smaller SMR systems throughout the country that are licensed for a limited number of frequencies and

¹ Motorola Comments, page 6.

offer service to specialized classes of customers. The Commission should continue to classify these systems as private.

10. ITA also agrees with the recommendations of Motorola and the National Association of Business and Educational Radio that, for the duration of the three-year transition period mandated by Congress for implementing the reclassification of private mobile services to commercial mobile services, the Commission should continue the existing prohibition on the provision of dispatch service by common carriers.

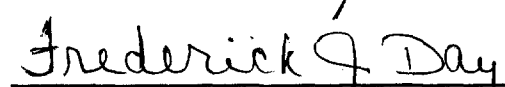
WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc., respectfully submits these Reply Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.

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Date: November 23, 1993